



MOTOR CARRIER SAFETY ADVISORY COMMITTEE

C/O: Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Room W64-232
Washington, DC 20590

September 29, 2008

The Honorable John H. Hill
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Administrator Hill:

The Motor Carrier Safety Advisory Committee (MCSAC) accepted Task 08-02, Regulatory Effectiveness Reviews, at its June 2008 meeting. Workgroup 08-02 was created to conduct work and was co-chaired by David Osiecki, John Bauer, and Robert Powers. The Workgroup was tasked with reviewing the roster of current Federal Motor Carrier Safety Administration (FMCSA) regulations, considering possible frameworks for reviewing regulations, and providing a priority list of current FMCSA safety regulations for regulatory effectiveness reviews.

The Workgroup met in person on September 8, 2008, and held conference calls and conducted work via e-mail. At the September 2008 meeting, the Workgroup submitted a report to the Committee for review and approval. The Committee approved the report and recommended FMCSA conduct regulatory effectiveness reviews on the following regulations, in order of priority:

1. Part 395: Hours of Service of Drivers
2. Part 391: Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors
3. Part 382: Controlled Substances and Alcohol Use and Testing
4. Part 383: Commercial Driver's License Standards; Requirements and Penalties
5. Part 396: Inspection, Repair, and Maintenance
6. Part 385: Safety Fitness Procedures
7. Part 387: Minimum Levels of Financial Responsibility for Motor Carriers
8. Part 393: Parts and Accessories Necessary for Safe Operation

I respectfully submit the enclosed report and recommendations to FMCSA for consideration.

Sincerely,

//signed//

David R. Parker
Chair
Motor Carrier Safety Advisory Committee

Enclosure

REGULATORY EFFECTIVENESS REVIEWS

Regulations Recommended for FMCSA Review

Report from
Workgroup on Task 08-02
to the
Motor Carrier Safety Advisory Committee
of the
Federal Motor Carrier Safety Administration
U.S. Department of Transportation

September 29, 2008
Washington, DC

The Motor Carrier Safety Advisory Committee (MCSAC) unanimously accepted Task 08-02, Regulatory Effectiveness Reviews, at its June 2008 meeting. Workgroup 08-02 was created to conduct work and was co-chaired by David Osiecki, John Bauer, and Robert Powers. The Workgroup was tasked with reviewing the roster of current Federal Motor Carrier Safety Administration (FMCSA) regulations, considering possible frameworks for reviewing regulations, and providing a priority list of current FMCSA safety regulations for regulatory effectiveness reviews.

The Workgroup met in person on September 8, 2008, and held conference calls and conducted work via e-mail. At the MCSAC September 2008 meeting, the Committee approved this report, which recommends FMCSA conduct regulatory effectiveness reviews of eight regulations, in order of priority.

Discussion

A regulatory effectiveness review evaluates the applicability, effectiveness, and clarity of regulations with the goal of eliminating any unnecessary regulatory burdens. FMCSA conducts regulatory effectiveness reviews to evaluate the effectiveness of FMCSA regulations. The reviews assist FMCSA in developing more effective rules and reduce unnecessary regulatory burdens by: executing a systematic, post-regulatory review capability; assessing the safety and economic impacts of rules; identifying unanticipated burdens/impacts on the regulated entities; determining if regulations are implemented as intended; determining if a rule can be simplified; and ascertaining whether technology or other factors change the value of a regulation.

Findings

The MCSAC reviewed the roster of FMCSA regulations and selected appropriate candidates for effectiveness reviews.

Recommendations

The MCSAC recommends that FMCSA conduct effectiveness reviews of the following regulations, in order of priority:

1. Part 395: Hours of Service of Drivers
2. Part 391: Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors
3. Part 382: Controlled Substances and Alcohol Use and Testing
4. Part 383: Commercial Driver's License Standards; Requirements and Penalties
5. Part 396: Inspection, Repair, and Maintenance
6. Part 385: Safety Fitness Procedures
7. Part 387: Minimum Levels of Financial Responsibility for Motor Carriers
8. Part 393: Parts and Accessories Necessary for Safe Operation

Part 395 – Hours of Service of Drivers

Basis for Review

Assess the extent to which the regulations maximize driver alertness and operational flexibility to improve safety.

Elements of Review

- Assess the effectiveness of the restrictive 2005 sleeper berth provision [§ 395.1(g)].
- Assess the need for supporting documents regulation.
- Investigate the latest fatigue research and best practices.
- Hours of service regulations pertaining to buses need not be reviewed.

Affected Stakeholders

- Commercial Vehicle Safety Alliance (CVSA)
- Insurance
- Shippers
- Industry groups
- Enforcement
- Advocacy groups
- Drivers using a sleeper berth

Part 391 – Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

Basis for Review

There may be better methods to achieve the objective of this part through the use of more advanced information system technologies. Also, a reassessment of the physical qualifications [§§ 391.41 and 391.43] (blood pressure, sleep disorders, etc.) is necessary to stay current with the medical community consensus. Finally, the regulations do not properly address Schedule II substance use or self-serving doctor selection shopping by commercial motor vehicle (CMV) drivers.

Elements of Review

Subparts C and E

- Assess the value of the annual motor vehicle report (MVR) pull requirement [§ 391.25] relative to more timely mechanisms such as state or third party emergency notification system.
- Assess the value of the Record of Violations requirement (§ 391.27).
- Assess the value and effectiveness of the carrier-based system of sharing drug and alcohol test results [§ 391.23(e)] and alternatives (e.g., a clearinghouse approach).
- Consider revising §§ 391.31 and 391.43, which pertain to driver demographics, diseases, and testing practices.
- Review regulations in light of drug label warnings.
- Review regulations in light of physiological effects of Schedule II drugs on motor skills, cognitive ability, and decision-making ability.
- Consider the possibility of doctor statements conflicting with a drug label.

Affected Stakeholders

- CVSA
- American Association of Motor Vehicle Administrators (AAMVA)
- Insurance companies
- Shippers
- Industry groups
- Enforcement
- Advocacy groups
- Medical professionals and review boards
- CMV drivers
- Pharmaceutical companies

Part 382 – Controlled Substances and Alcohol Use and Testing

Basis for Review

Although we recognize that FMCSA is already conducting an effectiveness review of this part, it is an important, complex, and costly regulation that should be adapted to advances in knowledge and technologies.

Elements of Review

Subparts A and C

- Compare test results, particularly those of alcohol testing, to regulatory evaluation assumptions.
- Assess the value and effectiveness of the carrier-based system of sharing drug and alcohol test results [§ 391.23(e)] and alternative approach (e.g., a clearinghouse approach).
- Assess the effectiveness and validity of the 5-panel test.
- Consider whether urine is the most appropriate specimen for testing.
- Evaluate the industry-wide approach for random testing rates. Is there a better way (i.e., a carrier-based approach) to incent carriers to reduce their positive rates?
- Assess the appropriateness of post-accident testing timeframes, especially with regard to citations.
- Consider whether a citation should be the trigger for post-accident testing?
- Assess the effectiveness of reasonable suspicion testing.
- Assess the effectiveness of the deterrent provision for possession of alcohol in unopened containers [40 CFR 392.5(a)(3)].
- Note that the current regulation does not require testing for prescription drug abuse or those drugs that may affect safe driving performance [§ 382.303].
 - Any action on § 382.303 should include a review of § 391.41(b)(12)(ii).

Affected Stakeholders

- Substance Abuse and Mental Health Services Administration (SAMSHA)
- Insurance
- CVSA
- Industry groups (e.g., Drug and Alcohol Testing Industries Association (DATIA))
- Enforcement
- Advocacy groups
- Drivers
- Medical professionals
- Shippers and carriers

Part 383 – Commercial Driver’s License Standards; Requirements and Penalties

Basis for Review

Although we recognize that FMCSA is currently considering a rulemaking on entry-level driver training, we believe Part 383 does not adequately address or provide for the following:

- Lack of good training across the industry, both interstate and intrastate.
- Lack of adequate oversight of training facilities or schools.
- Lack of driver retraining requirements.
- No prescribed curriculum.
- Lack of established and specific training requirements negatively impact driver qualifications and subsequently impact safe operation of commercial vehicles.
- Drivers may know laws and regulations, but they cannot drive.

Elements of Review

- Define the required knowledge and skills for new entrants.
- Assess whether the rule requires more than a mere list of hours in the classroom and hours in the truck.
- Assess whether drivers are required to demonstrate learned skills.
- Consider a prescribed curriculum for drivers.
- Consider whether drivers should present a certificate from a certified training school before commercial driver’s license (CDL) applicant can take the CDL test.

Affected Stakeholders

- Truck driver training schools
- Motor carriers that operate their own training schools
- State driver license credentialing agencies
- Individual drivers

Part 396 – Inspection, Repair, and Maintenance

Basis for Review

Although this is an important regulation, it contains outdated elements. Roadside inspection out-of-service (OOS) rates have remained around 25%, implying that vehicle condition is no longer drastically improving. Given changes in technology (e.g., antilock brakes), the current regulations may not ensure appropriate required maintenance.

Elements of Review

- Evaluate the effectiveness of the periodic inspection requirement [§ 396.17], particularly the minimum standard criteria.
- Consider those trailers used infrequently in commerce, intermodal chassis, and single vehicle exemption.
- Consider whether the record retention location requirement [§ 396.3(c)] has kept pace with technology advancements.
- Note that a defect could be classified as unnecessary for repair to comply with § 396.11(c), yet still be in violation of part 393.
- Note also that it is possible for a vehicle to pass an annual inspection (§ 396.17), but remain in violation of part 393.
- Consider new technological standards.
- Consider the use of wireless transmission, which could present an opportunity for real-time information, put the Agency in a better position to manage and correct potential problems, and improve the Agency's knowledge base.
- Assess the effectiveness of carrier self-inspection procedures.
- Assess the oversight of third-party inspectors.
- Note that vehicles involved in interstate commerce that do not cross state lines may not be subject to any type of federal or state inspection requirements (e.g., the Drayage trucks at Port of Los Angeles).

Affected Stakeholders

- CVSA
- Industry groups
- Enforcement
- Advocacy groups
- State DOTs
- Motor Carriers
- Maintenance and repair facilities
- Third-party inspectors

Part 385 – Safety Fitness Procedures

Basis for Review

There is concern that the current safety rating procedures do not adequately or timely identify and reflect the current safety fitness posture of motor carriers.

Elements of Review

Subparts A, B, and E

- Consider the merits of using “at fault” or “preventable” accidents rather than “frequency of accidents” [§ 385.7(f)].
- Assess the number and descriptions of the rating categories.
- Consider inclusion of initial/upfront training in the new entrant program.
- Note that the hazmat OOS rate for most carriers is inconsistent with their vehicle and driver OOS rate, which suggests a flawed methodology (subpart E). This impacts a carrier’s ability to obtain and keep a safety permit. Many general carriers no longer have the ability to handle extremely hazardous materials.

Subpart D

- Note that the number of new trucking and bus entrants has dramatically increased. There are few pre-operational requirements and compliance is not subject to verification prior to a carrier beginning operations. Should new entrants receive pre-operational management training? Should FMCSA allow third-party auditors to do safety audits?

Affected Stakeholders

- CVSA
- Carriers, including new entrants
- Insurance
- Shippers
- Industry groups
- Enforcement
- Advocacy groups

Part 387.9 - Minimum Levels of Financial Responsibility for Motor Carriers

Basis for Review

FMCSA is currently revising part 387. However, the outdated minimum standards may lower the bar to entry, rather than keeping a status quo.

Elements of Review

- Consider indexing minimum insurance requirements to inflation.

Affected Stakeholders

- Carriers
- Insurance companies

Part 393 – Parts and Accessories Necessary for Safe Operation

Basis for Review

There may be better ways to achieve the objective of the part through the use of more advanced information system technologies and increased knowledge.

Elements of Review

Subparts C, G and I

- Consider whether § 393.47(e) should include all clamp-type brakes.
- Update § 393.88 (television receivers) and § 393.77 (heaters) to include modern technology (e.g., lap tops, cell phones, heater types).
- Assess the effectiveness and appropriateness of § 393.118 (cargo securement for dressed lumber).
- Assess the effectiveness of § 393.75 and related OOS criteria, as well as roadside inspector training.
- Consider the need for additional cargo-specific securement methods. (subpart I).
- Assess whether current regulations [§§ 393.11(a)(1) and 393.86] have reduced fatalities and whether current standards are sufficient given current safety technology.

Affected Stakeholders

- CVSA
- Insurance
- Shippers
- Industry groups
- Enforcement
- Advocacy groups

APPENDIX I

Motor Carrier Safety Advisory Committee (MCSAC) Task Statement Task #08-02

I. TASK TITLE

Regulatory Effectiveness Reviews

II. BACKGROUND

A regulatory effectiveness review evaluates the applicability, effectiveness, and clarity of regulations with the goal of eliminating any unnecessary regulatory burdens. FMCSA conducts regulatory effectiveness reviews to evaluate the effectiveness of FMCSA regulations. The reviews assist FMCSA in developing more effective rules, and reduces unnecessary regulatory burdens by:

- executing a systematic, post-regulatory review capability;
- assessing the safety and economic impacts of rules;
- identifying unanticipated burdens/impacts on the regulated entities;
- determining if regulations are implemented as intended;
- determines if a rule can be simplified; and,
- ascertains whether technology or other factors change the value of a regulation.

III. TASK

The Committee should review the roster of current FMCSA regulations, consider possible frameworks for reviewing regulations, and provide a priority list of current FMCSA safety regulations for regulatory effectiveness reviews.

IV. ESTIMATED TIME TO COMPLETE TASK

The Committee should submit a report outlining the priority list of FMCSA regulations for regulatory effectiveness reviews at the September 2008 Committee meeting.

V. FMCSA TECHNICAL REPRESENTATIVES

Gary Middleton, Team Leader, Internal Evaluation Team, Strategic Planning and Program Evaluation Division

Valerie Height, Project Manager, Regulatory Development Division

APPENDIX 2

Work Group on 08-02 Regulatory Effectiveness Reviews

David Parker, Chair, *Great West Casualty Company*

* * *

John Bauer, *Kohl's Corporation*

Michael Greene, *Columbia Machine Works*

Clyde Hart, *American Bus Association*

Michael Irwin, *Michigan Center for Truck Safety*

Terry Maple, *Kansas Highway Patrol*

David Osiecki, *American Trucking Associations*

Steven Owings, *Road Safe America*

Robert Petrancosta, *Con Way Freight*

Robert Powers, *Michigan State Police*

Karen Sain, *North Carolina Highway Patrol*

Lester Sokolowski, *National Safety Council*

J. Todd Spencer, *Owner-Operator Independent Drivers Association*

Judith Stone, *Advocates for Highway and Auto Safety*

Roger Vanderpool, *Arizona Department of Public Safety*